

i. *The regulation of trade descriptions is not in itself a legitimate objective*

40. Canada recognizes that most of the stated objectives of the Order, such as consumer protection, prevention of fraud and deceptive practices, ensuring fairness in commercial transactions and the protection of language, can fall within the scope of legitimate objectives contemplated under Article 2.2 of the TBT Agreement. However, Canada has shown that one of the stated objectives -- the regulation of trade descriptions -- is simply a means of fulfilling policy objectives and is not a legitimate objective in and of itself within the scope of the TBT Agreement.²¹ In contrast, the EC asserts that "ensuring precision in the use of terminology in general and regulating trade descriptions in particular are legitimate objectives in themselves."²² Moreover, the EC has challenged Canada's evaluation of the elements that can be considered in determining whether a particular government policy objectives constitutes a legitimate objective under the TBT Agreement.

41. Trade descriptions are regulated for the purpose of achieving public policy objectives. States do not regulate trade names simply for the sake of regulating. States regulate trade descriptions *for specific purposes*. For example, trade descriptions might be regulated to provide consumers with accurate information, to prevent deceptive practices, to protect the health and welfare of consumers, or for several other public policy reasons. However, trade descriptions are not regulated in isolation.

42. In fact, the EC's argument supports Canada's position. The EC notes that precision in terminology allows "distinctions" and "choices" to be made.²³ This is simply another way of saying that precision in terminology is necessary *to do something* or *to achieve* some purpose, such as giving people adequate information so that they can make informed choices. Similarly, the EC observes that a consumer can only make an informed decision if provided with adequate information. This means that the objective of providing precision in terminology is *to meet an objective* of providing consumers with such information.²⁴ The EC's examples establish that the regulation of trade descriptions is a means to an end. Without a separate policy objective, there is no reason to regulate trade descriptions. The regulation of trade descriptions and precision in terminology are not policy objectives and therefore cannot constitute legitimate objectives within the scope of the TBT Agreement.

²¹ See paragraph 31 of Canada's first written submission.

²² See paragraph 65 of EC's first written submission.

²³ See paragraph 65 of the EC's first written submission.

²⁴ See paragraph 66 of the EC's first written submission.